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September 3, 2003

Michael J. Sullivan
U.S. Attorney
District of Massachusetts
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210

Dear U.S. Attorney Sullivan:

In ongoing bankruptcy proceedings involving the Polaroid Corporation, the Independent Examiner appointed by the court recently released a report that addresses many contentious issues and also raises a number of disturbing new concerns. I have followed this case very closely, and have co-authored legislation that would amend provisions of the federal bankruptcy code under which Polaroid shortchanged thousands of its employees, retirees, shareholders and creditors. I am writing to you today to request that the U.S. Attorney's Office undertake a review of the Examiner's investigation and conclusions for possible violations of federal law.

For example, the Examiner's report discloses that Polaroid's Board of Directors gave the firm's former chief executive, Gary DiCamillo, a special $1.4 million retention bonus shortly before the bankruptcy filing. The report further reveals that at least eight top managers of the original Polaroid Corporation are now equity partners in its successor company (the identity of the remaining owners is still undisclosed). In addition, the report states Polaroid failed to increase the valuation allowance against its deferred taxes in a timely manner, leading the Examiner to conclude that Polaroid's financial condition prior to filing for bankruptcy may have been more negative than reported in its filings with the Securities and Exchange Commission.

The Examiner also questions the activities of Polaroid's auditor, KPMG. The report reveals that Mr. DiCamillo spoke personally with Stephen Butler, then chairman of KPMG, regarding the accounting firm's decision not to issue a "going concern" opinion in public financial statements. Although Mr. DiCamillo revealed his conversation with Mr. Butler during the investigation, the report notes that Mr. Butler refused to be interviewed by the Examiner. The report further indicates that public filing of the financial problems, including those omitted from KPMG's audit opinion, came six months late.

In short, the report performs an important service by exposing a series of alarming facts that appear to bear directly on the Polaroid case. That these revelations have become public so late in the bankruptcy proceedings is, of course, a source of enormous anxiety to thousands of retirees and former employees – many of whom lost jobs, pension benefits, health and life insurance in the process. This heartache is exacerbated by the apparent reluctance of KMPG to allow public dissemination of material information, as suggested by its unsuccessful attempts to keep the final Examiner's report under court seal.

Based on the limited scope of the investigation and apparent inability of the Examiner to compel cooperation from material witnesses, however, it appears that many potential irregularities are left unresolved. It is essential to pursue these issues as far as the facts may lead, and to do so while the bankruptcy proceedings are still underway – before the resulting inequities are compounded by final court approval of this transaction.

In enacting the Sarbanes-Oxley Act of 2002, the US Congress spoke clearly and forcefully on the question of irresponsible corporate citizenship. In the future, corporate and accounting officers who fail to adhere to high ethical standards will be held personally accountable for such misconduct.

The legislation that I co-authored last year with Sen. Dick Durbin would further offer significant new safeguards against corporate excess. The thrust of our legislation is to help protect assets of corporations heading for bankruptcy from sham transactions by officers – so that these resources are available for legitimate claims by shareholders, employees, retirees and creditors. One key portion of this bill has already progressed in the Congress. The Bankruptcy Reform Act, approved by the full House of Representatives, contains a provision from our bill that empowers a bankruptcy court to reinstate health and pension benefits cut off by a corporate debtor just prior to filing a bankruptcy petition.

The Examiner's investigation raises serious new questions about whether officers of the Polaroid Corporation may have exploited company assets before and during bankruptcy, only to surface as managers and owners of its successor firm – and whether federal statutes on corporate governance and/or conflict of interest may apply.

With this in mind, I respectfully request that the U.S. Attorney's Office review these matters for any possible violations of law and/or for their relevance to other investigations that may be underway by the Securities and Exchange Commission, Department of Labor and other federal agencies. Pursuant to the court's order, I understand that the Examiner's report has already been forwarded to the Securities and Exchange Commission and the Justice Department. For these reasons, I respectfully request a thorough review by your office, given the significant public interest and potential victims in Massachusetts.

Sincerely,

William D. Delahunt